Supreme Court, U. S.
FILED
AUG 10 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1976

No. 77-340

WILLIAM BOLTE, et al.,
Rural Route #2
Box 220
Hillsboro, Ohio 45133,
Petitioners,

vs.

VIRGIL F. SIDERS, et al.,
135 North High Street
Hillsboro, Ohio, 45133,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

RICHARD S. DONAHEY
Attorney for Petitioners
501 South High Street
Columbus, Ohio 43215
(614) 224-8166

ROCKY A. COSS
Attorney for Respondents
127 East Main Street
Hillsboro, Ohio 45133
(513) 393-1851

MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus, Ohio 43216

INDEX

Opinions Below 1

Jurisdiction 2

Questions Presented 2

Statutes Involved 2

Statement of Case 3

Reasons for Granting Writ 4

Conclusion 11

Certificate of Service 11

Appendix

Notice of Appeal to United States Supreme Court 12

Motion for an Order Directing the Court of Appeals for Highland County to Certify its Record 13

Court of Appeals Opinion 14

Judgment Entry of Court of Appeals 17

Memorandum Opinion of Court of Common Pleas 19

Judgment Entry of Court of Common Pleas 23

TABLE OF AUTHORITIES

Baker vs. Carr, 369 U.S. 186, 82, S. Ct. 691 (1962) 6, 7
Coleman vs. Miller, 307 U.S. 433, 59 S. Ct. 972 (1939) 6
Davis vs. Watts, 52 O. App. 470, 3 N.E. 2d 923 (1935) 5, 6, 7
Foraker vs. Board of Education, 130 Ohio St. 243, 199 N.E. 74 (1935) 5, 10
Gomillion vs. Lightfoot, 364 U.S. 339 81 S. Ct. 125 (1961) 7
Link vs. Karb, Mayor, 89 Ohio St. 327 104 N.E. 632 (1914) 6, 7

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment, United States Constitution, Section 1 ..... 2, 5, 11
§21, Article II, Ohio Constitution 2, 8
§3(B) (2), Article IV, Ohio Constitution 3, 5, 7, 8, 9, 10

STATUTE

O.R.C., §3515.15 ..... 3, 7, 8, 9, 10

IN THE

Supreme Court of the United States

October Term, 1976

No.

WILLIAM BOLTE, et al.,
Petitioners,

vs.

VIRGIL F. SIDERS, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

William Bolte, et al., the petitioners herein, pray that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio entered in the above-entitled case on the 12th day of May, 1977.

Respectfully submitted,
/s/ RICHARD S. DONAHEY
Attorney for Petitioners

OPINIONS BELOW

The entry of the Supreme Court of Ohio overruling petitioners' motion to certify is printed in the Appen-

dix hereto, at page 13. The opinion of the Court of Appeals of Highland County, Ohio, is printed in the Appendix hereto, at Page 14. The findings of law and fact of the Court of Common Pleas, Highland County, Ohio is printed in the Appendix hereto, at page 19. The Judgment Entry of the Court of Common Pleas, Highland County, Ohio, is printed in the Appendix at page 23.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on May 12, 1977. The jurisdiction of this Court is invoked pursuant to 28 USC §1257(3).

QUESTION PRESENTED

Did the action of the Supreme Court of Ohio in overruling the petitioners' motion to certify operate to deny the petitioners due process of law secured to them by the Fourteenth Amendment to the Constitution of the United States?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part:

> No State shall make or enforce any law which shall * * * deprive any person of life, liberty, or property, without due process of law.

§21, Article II, Ohio Constitution:

> The general assembly shall determine by law, before what authority, and in what manner the trial of contested elections shall be conducted.

§3 (B) (2), Article IV, Ohio Constitution

> Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district and shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

§3515.15 Appeal on questions of law to Supreme Court. (GC §4785-172)

> The person against whom judgment is rendered in a contest of election may appeal on questions of law, within twenty days, to the supreme court; but such appeal shall not supersede the execution of the judgment of the court. Such appeal takes precedence over all other causes upon the calendar, and shall be set down for hearing and determination at the earliest convenient date. The laws and rules of the court governing appeals apply in the appeal of contested election cases. If the judgment of the lower court is affirmed, the supreme court shall order the judgment of such lower court to be enforced, if the party against whom the judgment is rendered is in possession of the office.

STATEMENT OF THE CASE

This case arose as a result of misconduct and official irregularities which occurred prior to and on election day, November 4, 1975, in Jackson Township, Highland County, Ohio. More specifically, the petitioners herein filed an action contesting the validity of that election in that, with respect to five issues concerning the sale of alcoholic beverages in Jackson Township carried on two separate ballots, "sample" ballots were

printed and distributed contrary to and in violation of Ohio law, and gross irregularities and abuses which occurred mandated that particular election be declared null and void and that a new election be ordered. This case was tried on February 5, 1976, in the Highland County Court of Common Pleas, Hillsboro, Ohio.

Final judgment against the petitioners was filed on February 18, 1976, by the Common Pleas Court. On March 8, 1976, the petitioners filed a Notice of Appeals to the Fourth District, Court of Appeals, Highland County, Ohio.

The Court of Appeals, in an opinion filed January 26, 1977, sua sponte dismissed the petitioners' appeal for want of jurisdiction. The Judgment Entry was not filed by the Court of Appeals until February 18, 1977. On March 14, 1977, the petitioners filed a Notice of Appeal to the Supreme Court of Ohio.

The order of the Supreme Court of Ohio was filed on May 12, 1977. In this order the highest state court overruled the petitioner's motion for an order directing the Court of Appeals to certify its record and thus refused to hear the petitioners' appeal. Consequently, the petitioners filed a Notice of Appeal to this Honorable Court on July 14, 1977.

REASONS FOR GRANTING THE WRIT

The case at bar contains within it special, important and compelling reasons for this Honorable Court to grant the petition for a writ of certiorari to review the judgment of the Supreme Court of the State of Ohio. The petitioners raise questions of constitutional and statutory construction which are of major importance to the preservation of due process of law guaranteed to all persons by the Constitution of the United States.

The Fourteenth Amendment to the United States Constitution requires that no State deprive any person of life, liberty or property, without due process of law. Due process of law has been defined as fundamental fairness. Included within this concept are the principles that each person must be given notice and an opportunity to be heard on the merits of their cause. Petitioners submit that they have been denied the opportunity to be heard upon the merits of their cause by the Court of Appeals and the Supreme Court of the State of Ohio. The refusal of these two tribunals to hear the appeal of the petitioners is predicated upon a misreading of the pertinent law and constitutes a serious abridgement of petitioners' Fourteenth Amendment rights. The following arguments support this contention.

The jurisdiction of the court of appeals to review the judgment of a court of record inferior to it is conferred by Section 3, Article IV of the Ohio Constitution and is not diminished by the application of the term political to describe an otherwise valid case.

The basis in law for the Court of Appeals' dismissal of this action for lack of jurisdiction is the decision in *Davis vs. Watts*, 52 O. App. 470, 3 N.E. 2d 923 (1935) aff. *Foraker vs. Board of Education*, 130 Ohio St. 243, 199 N.E. 74 (1935) which held that a court of appeals has no jurisdiction to review the decision of a common pleas court in an election contest. In reaching its decision, the Court of Appeals ignored Section 3(B)(2), Article IV of the Ohio Constitution. This Section provides that:

> "Courts of appeal shall have such jurisdiction . . . to review and affirm, modify, or reverse judgments or final orders of the Courts of record inferior to the court of appeals . . ."

The Court in the *Davis* case felt justified in ignoring this section of the Ohio Constitution on the ground that elections belong to the political branch of the government and are, therefore, beyond the control of the judicial power. *Link vs. Karb, Mayor*, 89 Ohio St. 327, 104 N.E. 632 (1914). This distinction between political and judicial power is an artificial one, however. It rests upon the idea that a separation of powers in the government requires the courts to stay out of any area which is not judicial in nature. This idea is identical to the "political question" concept which is applied in the federal courts.

Under the doctrine, a federal court would not decide a matter, regardless of whether or not it presented a case or controversy, if the issues presented had been committed by the Constitution to a branch of the government other than the judiciary. *Coleman vs. Miller*, 307 U.S. 433, 59 S. Ct. 972 (1939), *Baker vs. Carr*, 369 U.S. 186, 82 S. Ct. 691 (1962). In other words, the courts refused to extend jurisdiction to those cases which would have brought it into conflict with the President or Congress to such an extend that there would be no guarantee that the decisions of the courts could be, or would be enforced. The difficulty with this approach, however, is that under the Constitution the complete power to govern is vested in the Congress and the President so that in theory, at least, no court could ever reach a decision in any case involving an act of Congress or the President. In the *Baker* decision, the United States Supreme Court severely limited the reach of this doctrine. It held that:

> "(T)he doctrine of which we treat is one of political questions", not one of "political cases". The courts can not reject as "no law suit" a bona fide

> controversy as to whether some action designated as "political" exceeds constitutional authority".

Baker vs. Carr and *Gomillion vs. Lightfoot*, 364 U.S. 339, 81 S. Ct. 125 (1961) involved questions of reapportionment issues involving elections and therefore traditionally considered to be the province of the legislative branch as opposed to the judiciary. Yet as these two decisions indicate, when events issue from the political arena, the federal courts have jurisdiction to decide them. The same reasoning is applicable to the election contest in this state.

Neither the decision in *Link vs. Karb, Mayor, supra.* nor the decision in *Davis vs. Watts, supra.* defines what is political as opposed to judicial power. Nor is it clear what the courts mean when they say they are exercising their political power in a particular case. A court is not a political body. It has certain prescribed functions which are set out in Article IV of the Ohio Constitution which vests the judicial power in the courts. It does not follow that if a court hears and decides a case which has political ramifications, it is exercising any power other than that conferred upon it by Article IV. Moreover, it is clear that in deciding an election contest, a court of common pleas performs the same role in the same manner as it would in deciding any other matter before it. Section 3515.15, Ohio Revised Code.

There is therefore, no way to differentiate an election contest from any other judicial proceeding except through the use of the word "political". This means of distinction however, has been made extinct by the decision in *Baker vs. Carr*, and those which followed it. It, therefore, follows that the court of

appeals has jurisdiction to hear this matter and its jurisdiction is derived from Section 3(B) (2), Article IV.

Petitioners further contend that Section 3515.15, Ohio Revised Code, which authorizes a direct review by the Ohio Supreme Court is an unconstitutional extension of the Ohio General Assembly's power and therefore does not affect the jurisdiction of the court of appeals to review the judgment of a court of common pleas in an election contest case.

Section 21, Article II of the Ohio Constitution provides that:

> "The General Assembly shall determine, by law, before what authority and in what manner, the *trial* of contested elections shall be conducted". (Emphasis added).

It is contended that this provision allows the legislature to determine how election contests should be handled in all respects, including on appeal. The clear intent of the Constitution, as manifested by the wording of this section, however, is that the legislature can only provide how the trial should proceed. It has no authority whatsoever to determine before whom and in what manner the appeal of such cases may be had. To contend that it does, is to read something into the section which is clearly not there.

There is a clear difference between a trial and an appeal. They are no way synonymous nor can they be considered to be such. There can thus be no doubt that even though the legislature may prescribe how an election contest must be initially decided, an appeal from such decision must be made pursuant to Article IV of the Ohio Constitution which grants jurisdiction

to the courts of appeal to review judgments and final orders of courts of record; Section 3(B) (2), Article IV.

Petitioners therefore contend that the Ohio Supreme Court has jurisdiction to decide this matter and further, petitioners contend that Section 3515.15, Ohio Revised Code, to the extent that it creates a review not provided for in Article IV of the Ohio Constitution, is void as an unconstitutional exercise of power by the General Assembly.

Finally, petitioners submit that even if this Court finds that the statute authorizing an appeal directly to the Ohio Supreme Court in an election contest is a constitutional exercise of the legislature's authority, the court of appeals still has the jurisdiction to hear this case since such method of review is discretionary only.

Section 3515.15, Ohio Revised Code, provides that:

> "The person against whom judgment is rendered in a contest of election *may* appeal on questions of law . . . to the Supreme Court." (emphasis added).

Webster's New World Dictionary, defines "may" as a possibility on a contingency. It does not indicate an obligation but instead allows a choice of action. As such, the above quoted section creates an alternative method of review to that provided for under Article IV of the Ohio Constitution. Moreover, these alternative methods of remedy are not inconsistent with each other. The person against whom judgment is rendered in an election contest can, if he so desires, appeal directly to the Supreme Court. The appeal, however, is limited to questions of law and can only be taken

by leave of court. *Foraker vs. Board of Education, supra.* An appeal to the court of appeals, however, can be taken as a matter of right provided it is filed within twenty (20) days of judgment and prior to the establishment of the New Rules of Appellate Procedure could be taken on questions of law and fact.

The person against whom judgment is rendered in an election contest thus has a choice as to how he should proceed on appeal. If he choses to appeal pursuant to Section 3515.15, Ohio Revised Code, he can obtain an authorative decision by the state's highest court in the shortest possible time. By choosing this course of action, though, the individual runs the risk that the Supreme Court may not allow him to file his appeal. Moreover, an appeal to the Supreme Court will not stay execution of the judgment of the trial court, Section 3515.15, Ohio Revised Code, as an appeal to a court of appeals can. (Rule 7, Rules of Appellate Procedure).

An appeal taken pursuant to Article IV of the Ohio Constitution, while allowing a greater degree of certainty to the appellant, is admittedly more time consuming. This can be fatal where the election contest involves an election to office. In such a case, the fear is that the individual in office will cause irreparable harm while the appeal proceeds through normal channels from the court of appeals to the Supreme Court. In such a case a direct appeal to the Supreme Court is justified. There is no necessity present in this case. The election at issue concerned a local option to sell intoxicating beverages. The potential for irreparable harm inherent in an election contest over an office is not present in this case. The only harm which is involved is that the will of the electorate will be temporarily thwarted while the court of appeals reaches its decision. This is not controlling, though, since this problem is inherent in election contests in general, regardless of who hears the appeal.

The petitioners have chosen this method of bringing their appeal because they did not want to run the risk that this case would not be heard. As such, they are entitled to have review processed in the manner which they have chosen. The Ohio Supreme Court should not have dismissed for the reason that there is an alternative means of review which the petitioners did not chose to follow.

CONCLUSION

The foregoing arguments reveal that the petitioners have in fact been unjustly denied the opportunity to have the merits of their cause reviewed by the proper tribunals. The effect of this denial is an erosion of the concept of due process of law. In order to alleviate this erosion the petitioners herein respectfully pray that a writ of certiorari to the Supreme Court of the State of Ohio may issue.

/s/ RICHARD S. DONAHEY
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Petition for Writ of Certiorari was served upon Rocky A. Coss, Attorney for Respondents, 127 East Main Street, Hillsboro, Ohio 45133, by regular U.S. Mail on this ..... day of ....., 1977.

/s/ RICHARD S. DONAHEY
Attorney for Petitioners

APPENDIX

IN THE SUPREME COURT OF THE STATE OF OHIO

Case No. 77-389

WILLIAM BOLTE, et al.,
Plaintiff-Appellants,

vs.

VIRGIL F. SIDERS, et al.,
Defendant-Appellees.

NOTICE OF APPEAL

Now come Appellants, William Bolte, et al., and give notice of appeal to the Supreme Court of the United States from the order entered in the Supreme Court of the State of Ohio on the 12th day of May, 1977.

/s/ RICHARD S. DONAHEY
Attorney for Appellants
501 South High Street
Columbus, Ohio 43215
(614) 224-8166

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal was served upon Rocky A. Coss, Prosecuting Attorney, 127 East Main Street, Hillsboro, Ohio 45133 by regular U.S. mail on this 13th day of July, 1977.

/s/ RICHARD S. DONAHEY
Attorney for Appellants

THE SUPREME COURT OF THE STATE OF OHIO

1977 Term
May 12, 1977

No. 77-389

THE STATE OF OHIO,
City of Columbus.
WILLIAM BOLTE, et al.,
Appellants,

vs.

VIRGIL F. SIDERS, et al.,
Appellees.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR HIGHLAND COUNTY TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by Richard S. Donahey.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this ..... day of ....., 19...

FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

No. 313

WILLIAM BOLTE, et al.,
Plaintiff-Appellants,
vs.
VIRGIL F. SIDERS, et al.,
Defendant-Appellees.

OPINION

APPEARANCES

Richard S. Donahey, Columbus, Ohio, for Appellants.
John O. Crouse, Hillsboro, Ohio, for Appellees.

Stephenson, J.,

This is an appeal from a judgment of the Highland County Common Pleas Court entered in an election contest adverse to the plaintiffs contesting the election results, respecting an election in Jackson Township of Highland County upon a member of ballot issue as to the sale of intoxicating liquor, malt beverages, wine and beer in the township. Errors have been assigned that the judgment is (1) against the manifest weight of the evidence and contrary to law and (2) the court erred in refusing admission of certain testimony.

It is the duty of a Court of Appeals to determine whether or not the court has jurisdiction of an appeal and to do so sua spon even though the issue is not raised by the parties. cf. *Whitaker-Merrill Co. vs. Geupel Construction Co., Inc.*, 29 Ohio St. 2d 184. We

hold in this appeal we are without jurisdiction and dismiss the appeal for the following reasons:

Article II, Section 21 of the Ohio Constitution provides as follows:

> "21. Trial of contested elections.
> The General Assembly shall determine, by law, before what authority, and in what manner, the trial of contested elections shall be conducted."

R.C. 3515.08 et sec provides the procedure as to election contests. Depending on the nature of the office or issue being contested, the proper court to initially hear the contest is set forth in R.C. 3515.08. The courts in Ohio are awarded basic jurisdiction by the Ohio Constitution which is beyond the authority of the General Assembly to alter although it may regulate its exercise. Such jurisdiction is an award of judicial power. In substance, the Ohio Supreme Court has interpreted the contest authority in Article II, Section 21, supra, to be an award of legislative power granting the discretion to choose the methods and tribunals by which election may be contested. While, normally the General Assembly cannot confer upon courts nonjudicial power, because of the express constitution grant, utilization of courts are proper. *Thompson vs. Redington*, 92 Ohio St. 101. The courts in such cases are exercising political and not judicial power.

The General Assembly, exercising its constitutional authority has enacted an appeal procedure in R.C. 3515.15 which provides in part, the following:

> "The person against whom judgment is rendered in a contest of election may appeal on questions of law, within twenty days, *to the supreme court*, but such appeal shall not supersede the execution of the judgment of the court." (Emphasis Added)

In *Jolly vs. Deeds*, 135 Ohio St. 369, an appeal from a wet-dry election contest in Vinton County, the Ohio Supreme Court reaffirmed its earlier decision in *Mehling vs. Moorehead*, 133 Ohio St. 395, and held direct appeals from the Common Pleas Court to the Ohio Supreme Court were constitutional and proper in that such statutory authorization was addressed to the political and not the judicial power of the Supreme Court.

Since no statutory provision is made for appeals in election contests from the Common Pleas Court to the Court of Appeals this court, with predecessor members, held in *Davis vs. Watts*, 52 Ohio App. 474, the following which is embodied in the headnote:

> "Since Ohio courts have no jurisdiction over election contests apart from statute, this court has no jurisdiction to review the judgment of the Court of Common Pleas in such a contest, as Section 4785-172, General Code, providing that a person in an election contest against whom a judgment is rendered may prosecute error within twenty days to the Supreme Court, gives no jurisdiction to the Court of Appeals."

The decision was affirmed by the Ohio Supreme Court at 130 Ohio St. 243.

It follows from the above that the within appeal must be dismissed.

APPEAL DISMISSED

Gray, P. J. and Abele, J., CONCUR:

COURT OF APPEALS
HIGHLAND COUNTY, OHIO

No. 313

WILLIAM BOLTE, et al.,
Plaintiff-Appellants,

vs.

VIRGIL F. SIDERS, et al.,
Defendant-Appellees.

JUDGMENT ENTRY

This cause came on to be heard upon the appeal on consideration of law, assignments of error, the record from the Common Pleas Court of Highland County, and the briefs.

Upon consideration thereof, the court finds that this cause is not properly before this court and this court has no jurisdiction thereof.

It is therefore ordered, adjudged and decreed by the court that the appeal herein be, and the same is, hereby dismissed.

It is further ordered that a mandate be sent to the Highland County Common Pleas Court for execution upon this judgment.

Costs to be taxed in compliance with Rule 24, Appellate Rules.

And the Court being of the opinion that there were reasonable grounds for this appeal, allows no penalty.

It is further ordered that a certified copy of this Judgment, with a copy of the opinion attached, shall constitute the mandate pursuant to Rule 27, Ohio Rules of Appellate Procedure.

To all of which the Appellant, by their counsel, excepts.

/s/ HOMER E. ABELE
Presiding Judge

IN THE COURT OF COMMON PLEAS
HIGHLAND COUNTY, OHIO

Case No. 75 CIV 319

WILLIAM BOLTE, et al.,
Plaintiffs,

vs.

VIRGIL F. SIDERS, et al.,
Defendants.

MEMORANDUM OPINION

FACTS

This case arises out of a disputed election in Jackson Township, Highland County, on November 4, 1975, and is concerned more specifically with 5 issues concerning the sale of alcoholic beverages in said township and was carried on two separate ballots.

The official results, following a recount on Issue 1, first ballot and Issue 1, second ballot were as follows:

Issue 1, first ballot — 133 yes 135 no
Issue 1, second ballot — 123 yes 139 no

From these results plaintiffs, who it is stipulated are duly qualified electors of said township, bring this complaint and by their pleadings and opening statement allege the following:

1. That sample ballots were printed and distributed contrary to and in violation of law;
2. That there were gross irregularities and abuses at the polling place;
3. That at least one person, a non-resident was permitted to vote.

They pray that the election be declared null and void and that a new election be ordered by the Court.

The defense contends that while there may indeed have been some minor infractions that they were not of the magnitude to warrant this court to take such drastic steps.

Defense disputes the fact that a non-resident was permitted to vote.

FINDING

The Court has carefully considered the pleadings, evidence and arguments of counsel and having done so must conclude that the finding herein must be in favor of Defendants and against Plaintiff and it is so ordered.

The Court attaches hereto separate findings of facts and conclusions of law so that further comment by the Court herein shall hopefully be brief and to the point.

First of all let us examine complainants allegations and the proof thereof individually.

There was no testimony of any misconduct by the Board of Elections regarding sample ballots. The Director testified that she made one copy of each ballot for different individuals. Obviously this was not an effort by the board or the director to offer these as sample ballots. There was no mass production or distribution.

The only specific person she recalls was a bank employee, who keeps a tally board on election night.

Perhaps the making of the copy of the ballot displays a lack of discretion but cannot be interpreted as having been willful disobedience nor an unlawful attempt to violate the statute.

Nor is there any indication of a "flood" of these copies. Mr. Garman said he saw about seventy-five to one-hundred at the church, a few of which he took and the testimony further shows that of those he took his wife, Nancy Garman, testified that she passed, by her estimate, "less than fifty."

James Gillispie testified he voted other than in a voting booth, contrary to statute. He is obviously a healthy, well nourished individual of reasonable intelligence and lacks any explanation for his conduct. No evidence was presented indicating this violation was ever known by any poll workers.

Mrs. Farrells conduct with Mr. Seibert Carter was not unusual. Here was an elderly crippled man, hardly able to see and without family. The Farrells had taken care of him for years, and this was of general knowledge in the neighborhood.

Therefore to permit her to assist him again perhaps was not good judgement, but again does not appear all that unusual.

The testimony was that she read the issues to him and what ballots he voted he marked himself.

Mr. Farrells alleged misconduct, in and out of the voting booth was reprehensible, if true. He denies the allegations of his conduct inside the booth, but admits commenting to one person concerning the issue in question outside the booth. Again, no evidence indicates any of this was ever known by poll workers.

Mr. Samuel Newkirk testified that he saw one person handling some papers that looked like ballots, but he does not know whether they were marked or not, nor in fact, if they were ballots. Again, he reported no misconduct to the presiding judge nor made any other complaint until today.

The testimony further disclosed that while voting was brisk and sometimes people had to wait only one witness complained of two people, who appeared to be "loitering or congregating." No witness seemed to have been there more than 45 minutes so the proof as to this allegation is problematical indeed.

As to the voting of a non-resident, the only evidence offered, was as to Mary Frances Moore.

This failed in proof, and in fact the evidence is overwhelmingly to the contrary that Mary Frances Moore at no time changed her location with the necessary manifestation of intent to change her legal voting residence.

The change of residence required by law, must not only be a change of location but must be accompanied by the necessary intent of making the new location their legal and permanent place of residence.

Thus viewing the evidence, giving to it that interpretation most favorable to Plaintiff, the Court is not of the opinion that Plaintiff has made out a sufficient case to warrant the relief prayed for.

/s/ PAUL E. RILEY, *Judge*
By Assignment

IN THE COURT OF COMMON PLEAS
HIGHLAND COUNTY, OHIO

Case No. 75-CIV-319

WILLIAM BOLTE, et al.,
Plaintiffs,

vs.

VIRGIL F. SIDERS, et al.,
Defendants.

JUDGEMENT ENTRY

This cause came on for hearing upon the pleadings, evidence and arguments of counsel and the court, having considered all of the foregoing hereby enters judgement for Defendants herein.

Plaintiff to pay costs of suit taxed at $176.38.

To all of the foregoing, Plaintiff excepts.

Enter this . . . day of February, 1976.

/s/ PAUL E. RILEY, *Judge*
By Assignment